

**Issue Paper
Water Transfers**



Memorandum

Date: October 10, 1996

To: Bay-Delta Advisory Council

From: Lester A. Snow
Executive Director

Subject: Water Transfers in the Bay-Delta Program

Issue Summary

Water transfers--drought, short-term and long-term--have been a part of the Program actions under consideration since Workshop 3 back in October of 1995. It has been recognized that transfers can provide an effective means of moving water between users on a compensated basis, as well as a means for providing incentives for implementation of various water management techniques. However, it is also recognized that water transfers can have a variety of direct and indirect negative impacts. Recognizing the desirability of transfers which do not create these negative impacts, Governor Wilson articulated the state transfer policy in April of 1992 which specifically calls for voluntary willing seller/willing buyer transfers, which address the potential negative impacts to local groundwater, to the environment and to third parties. Subsequently, on October 30, 1992, President Bush signed the Central Valley Project Improvement Act which established federal policy on water transfers within the Central Valley Project, and similarly identified the issues and impacts that must be addressed in consideration of a transfer. The CALFED Bay-Delta Program has included as a broad water management concept the facilitation of water transfers which:

1. Require water transfers to be voluntary, protect the water rights of sellers, and result in transfers of real, not paper, water.
2. Acknowledge, and avoid or mitigate, potential impacts to local environmental resources or habitats.
3. Acknowledge, and avoid or mitigate, potential overdraft or degradation impacts to groundwater basins.

CALFED Agencies

California

The Resources Agency
Department of Fish and Game
Department of Water Resources
California Environmental Protection Agency
State Water Resources Control Board

Federal

Environmental Protection Agency
Department of the Interior
Fish and Wildlife Service
Bureau of Reclamation
Department of Commerce
National Marine Fisheries Service

4. Include requirements that entities receiving transferred water show efficient use of existing water supplies.
5. Involve communities whose economies may be affected, as well as water districts and agencies holding water rights or contracts, in determining the appropriateness of specific transfers.

BDAC Considerations

Current water management policy direction contained within the alternatives are that transfers can be beneficial, both in terms of water supply and market incentives, assuming that the transfers take place 1) on a voluntary basis, 2) without harm to local environmental resources, 3) without adverse impacts to groundwater basins, 4) only after demonstration of efficient use of existing supplies, and 5) with appropriate involvement of local communities and water districts.

Recognizing that considerable additional work is necessary to ensure compliance with these conditions,

- **Does BDAC consider this transfer policy to be a reasonable approach for CALFED?**
- **Are any of these conditions unnecessary?**
- **Are there other conditions that should be considered when addressing the transfer issue?**

Background

To provide more insight into the issues surrounding water transfers, a copy of the Water Education Foundation's *Layperson's Guide to Water Marketing and Transfers* has been included in this packet (BDAC members only). In addition, excerpts from the Governor's policy statement and CVPIA pertaining to water transfers have been included below.

Excerpt from Governor Wilson's April 1992 Water Policy Statement

"Just as we've learned to harness the power of a vast reservoir, so should we also learn to harness the power of market forces. The success of our State Water Bank proves that voluntary transfers -- or water marketing, as some term it -- does work, and I want to see it work on a an even larger scale."

But water is a vital resource . . . vital to the life of a poor, small town, an estuary, and to a big city of vast wealth. But it may be even more critically necessary to the rural area with its economy almost entirely dependent upon agriculture and the availability of irrigation.

For that reason, even if it's possible to create a totally free water market, there are still key issues that must be resolved with great care to develop a fair and effective transfer policy.

Care must be given to the impact of transfers upon groundwater resources, fish and wildlife, protection of rural communities, and the determination of which entities should have a role in the approval of transfers, and just what that role should be.

There are many pending state and federal legislative initiatives regarding water transfers. Unfortunately, some of them are guaranteed to release only a whitewater flood of lawsuits. I will support legislation that, at a minimum, meets these criteria:

First: Water transfers must be voluntary. And they must result in transfers that are real, not just paper. Above all, water rights of sellers must not be impaired.

Second: Water transfers must not harm fish and wildlife resources and their habitats.

Third: We need to assure that transfers will not cause overdraft or degradation of groundwater basins.

Fourth: Entities receiving transferred water should be required to show that they are making efficient use of existing water supplies, including carrying out urban Best Management Plans or Agricultural Water Efficiency Practices.

Fifth and finally: Water districts and agencies that hold water rights or contracts to transferred water must have a strong role in determining what is done. The impact on the fiscal integrity of the districts and on the economy of small agricultural communities in the San Joaquin Valley can't be ignored . . . any more than can the needs of high value-added, high tech industries in the Silicon Valley.

Of course, our water belongs to all the people of California. State control is more likely where transfers involve use of the state plumbing system, and where our environmental obligations could be affected.

Most of all, in times of severe hardship, the state must be able to provide water to meet critical needs. But within these limits, there are strong roles for both a state-operated Water Bank to ease hardship or satisfy emergency needs . . . and for a free market."

Excerpt from the October 1992 Central Valley Project Improvement Act (CVPIA)

SEC. 3405. WATER TRANSFERS, IMPROVED WATER MANAGEMENT AND CONSERVATION.

- (a) WATER TRANSFERS. - In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian Tribe, or private non-profit organization for project purposes or any purpose recognized as beneficial under applicable State law. Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.
- (1) CONDITIONS FOR TRANSFERS. - All transfers to Central Valley Project water authorized by this subsection shall be subject to review and approval by the Secretary under the conditions specified in this subsection. Transfers involving more than 20 percent of the Central Valley Project water subject to long-term contract within any contracting district or agency shall also be subject to review and approval by such district or agency under the conditions specified in this subsection:
 - (A) No transfer to combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.
 - (B) All water under the contract which is transferred under authority of this subsection to any district or agency which is not a Central Valley Project contractor at the time of enactment of this title shall, if used for irrigation purposes, be repaid at the greater of the full-cost or cost of service rates, or, if the water is used for municipal and industrial purposes, at the greater of the cost of service or municipal and industrial rates.
 - (C) No transfers authorized by this subsection shall be approved unless the transfer is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon.

- (D) No transfer authorized by this subsection shall be approved unless the transfer is consistent with State law, including but not limited to provisions of the California Environmental Quality Act.
- (E) All transfers authorized by this subsection shall be deemed a beneficial use of water by the transferor for the purposes of section 8 of the Act of June 17, 1902, 32 Stat. 390, 43 U.S.C. 372.
- (F) All transfers entered into pursuant to this subsection for uses outside the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's total costs associated with the development and negotiation of the transfer.
- (G) No transfer authorized by this subsection shall be considered by the Secretary as conferring supplemental or additional benefits on Central Valley Project water contractors as provided in section 203 of Public Law 97- 293 (43 U.S.C. 390(cc)).
- (H) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary has determined, consistent with paragraph 3405(a)(2) of this title, that the transfer will not violate the provisions of this title or other Federal law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations or fish and wildlife obligations under this title because of limitations in conveyance or pumping capacity.
- (I) The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.
- (J) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no significant long-term adverse impact on groundwater conditions in the transferor's service area.

- (K) The Secretary shall not approve a transfer unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no unreasonable impact on the water supply, operations, or financial conditions of the transferor's contracting district or agency or its water users.
 - (L) The Secretary shall not approve a transfer if the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, unless the Secretary determines pursuant to findings setting forth the basis for such determination that such adverse effects would be more than offset by the benefits of the proposed transfer. In the event of such a determination, the Secretary shall develop and implement alternative measures and mitigation activities as integral and concurrent elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer.
 - (M) Transfers between Central Valley Project contractors within countries, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs (A) and (I) of this paragraph.
- (2) REVIEW AND APPROVAL OF TRANSFERS. - All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:
- (A) Decisions on water transfers subject to review by a contracting district or agency or by the Secretary shall be rendered within ninety days of receiving a written transfer proposal from the transferee or transferor. Such written proposal should provide all information reasonably necessary to determine whether the transfer complies with the terms and conditions of this subsection.
 - (B) All transfers subject to review by a contracting district or agency shall be reviewed in a public process similar to that provided for in section 226 of Pub. L. 97-293.
 - (C) The contracting district or agency or the Secretary shall approve all transfers subject to review and approval by such entity if such transfers are consistent with the terms and conditions of this subsection. To disapprove a transfer, the contracting district or agency or the Secretary shall inform the transferee and transferor, in writing, why the transfer

does not comply with the terms and conditions of this subsection and what alternatives, if any, could be included so that the transfer would reasonably comply with the requirements of this subsection.

- (D) If the contracting district or agency or the Secretary fails to approve or disapprove a proposed transfer within ninety days of receiving a complete written proposal from the transferee or transferor, then the transfer shall be deemed approved.
- (3) Transfers executed after September 30, 1999 shall only be governed by the provisions of subparagraphs 3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title, and by State law.